



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SALES—EQUITABLE LIEN—BILLS OF LADING AS SECURITY FOR TIME DRAFTS.—The defendant, in pursuance of an order, shipped goods to a firm in Buenos Aires taking out negotiable bills of lading. The National Park Bank discounted two ninety day drafts drawn by the defendant upon the vendee for the amount of the purchase price, and took the bills of lading duly endorsed as security. The vendee accepted the drafts and received the bills of lading from the bank. Subsequently both the defendant and the vendee became bankrupt and the latter returned the goods to the defendant. The bank made a motion to obtain possession of the goods upon the ground that they had an equitable lien upon them. Held, two judges dissenting, the bank had no lien. *Helburn Thompson Co. v. All Americas Mercantile Corporation* (App. Div. 1st Dept. 1917) 167 N. Y. Supp. 711.

The drawing of a time draft against a consignment implies a credit transaction and entitles the vendee to the bill of lading, which represents the goods, upon the acceptance of the draft. See *National Bank of Commerce v. Merchants Bank* (1875) 91 U. S. 92. Accordingly a party who discounts the draft has no right to require an acceptance of the draft without surrendering the bill of lading; and upon surrender of the bill of lading all his legal rights in the goods pass to the vendee. N. Y. Pers. Prop. Law § 114 (a), Uniform Sales Act § 33 (a); see *Gibson v. Stevens* (1850) 49 U. S. 384. The claim of the bank in the principal case, however, was that it had retained equitable rights in the goods. A contract to hold specific goods as security for the discharge of an obligation is specifically enforceable and will create an equitable lien upon the property charged. Jones, Liens (3rd ed.) § 30. The courts have often implied such agreements in favor of a party discounting a draft when the money was advanced upon a consignment without a delivery of the bill of lading. *Parker v. Baxter* (1879) 19 Hun 410, aff'd 86 N. Y. 586; *Flour City Bank v. Garfield* (N. Y. 1883) 30 Hun 579. But there is no basis for the implication of an equitable lien where the discounting bank receives the bill of lading. It is amply protected by virtue of the legal rights obtained, and when it does relinquish the security and accept the personal obligation of the consignee instead, it forecloses the inference that it intends to retain any rights in the goods; and this is even true where the bank had a right to hold the bill of lading until payment. The situation is analogous to that of a common law lienor, who, upon a voluntary surrender of the goods upon which he had the lien, lost all his rights, both legal and equitable, in the pledged property. *Bailey v. Quint* (1850) 22 Vt. 474; *Stickney v. Allen* (1858) 76 Mass. 352. It would seem, therefore, that the decision in the principal case is sound.

TORTS—DECEIT—PROMISE MADE WITHOUT PRESENT INTENTION TO PERFORM.—The defendant sold a jitney bus to the plaintiff, promising orally that if the plaintiff should be unable to secure sufficient business the defendant would secure it for him. The plaintiff, on learning that the defendant had never intended to do this, continued to use the car, but later brought this action for the rescission of the contract and damages. Held, the plaintiff by using the car after discovering the fraud had lost his right to rescission. The court intimated, however, that if the plaintiff had properly stated his cause of action he might have recovered in tort. *Fleming v. Gerlinger Motorcar Co.* (Ore. 1917) 169 Pac. 28.

The courts are divided as to whether an intention to deceive is essential to the maintenance of an action in tort for misrepresentation, but they all agree that where this intention is present the action will lie. Williston, Sales § 632; Chapin, Torts 411. In an action for rescission, however, a material misrepresentation, intentional or innocent, will support the bill. 15 Columbia Law Rev. 187. But if the statement is a promise or prophecy it is obvious that a present intention not to perform or a present lack of belief in the statement must be present in order that the statement should be a misrepresentation at all. *Field v. Seubert Bearing Co.* (1917) 167 N. Y. Supp. 294. Hence, in this class of cases it is immaterial whether the plaintiff proceed at law or in equity. Most courts have permitted an action for a deliberate misstatement of present intention on the ground that a promise to do something in the future embodies a representation of a present intention to perform. *McLean v. Southwestern Casualty Ins. Co.* (Okla. 1916) 159 Pac. 660; *McElrath v. Electric Investments Co.* (1911) 114 Minn. 358, 131 N. W. 380; cf. *Standard Elevator Co. v. Wilson* (1907) 218 Pa. 280, 67 Atl. 463. This present intention, although difficult of proof, is a fact, see *Edginton v. Fitzmaurice* (1884) 29 Ch. D. 459; *Adams v. Gillig* (1910) 199 N. Y. 314, 92 N. E. 670, and hence the case falls within the general rule that a deliberate misstatement of a past or present fact will support an action in tort. Chapin, *op. cit.* 397. Some courts have refused to adopt this view, *Farris v. Strong* (1897) 24 Colo. 107, 48 Pac. 963; *Tufts v. Weinfeld* (1894) 88 Wis. 647, 60 N. W. 992, because of the logical difficulty of separating the abstract present intention from the promise or prophecy. Their argument rests on metaphysical grounds which, although believed to be unsound, cannot flatly be contradicted, but certainly considerations of good policy and natural justice seem to lend support to the majority view.

USURY—EXCESSIVE INTEREST DEPENDENT UPON CONTINGENCY.—The defendant loaned a sum of money to the plaintiff in consideration of an assignment of an interest in a vested remainder, payable on the death of the life tenant. According to the mortality tables, the interest on the loan would exceed the legal rate, and actually did exceed it when the debt became due. *Held*, the transaction was not usurious in absence of an intention to take an usurious rate. *Hartley v. Eagle Ins. Co.* (Ct. of App. 1918) 58 N. Y. L. J. 1223.

Usury is the taking under contract of more interest for the use or forbearance of money than the law allows. Webb, Usury § 1. Consequently, when the lender stipulates for the repayment of the principal plus the highest legal rate of interest and for additional returns upon a contingency, the agreement is usurious, *Browne v. Vredenburg* (1870) 43 N. Y. 195; *Miller v. Life Ins. Co.* (1896) 118 N. C. 612, 24 S. E. 848, unless the contingency is within the borrower's control. *State v. Elliot* (1900) 61 Kan. 518, 59 Pac. 1047; *Taylor v. Buzzard* (1905) 114 Mo. App. 622, 90 S. W. 126. Since the usury laws apply only to interest for the use or forbearance of money, a rate of return for the loan which includes a fair compensation for other services is not usurious. *Matthews v. Cole* (1877) 70 N. Y. 239; see *Smith v. Wolf* (1881) 55 Iowa 555, 8 N. W. 429. Similarly, contracts which provide for rates exceeding that permitted by statute but which at the same time risk the repayment of the principal are not invalid, *Chesterfield v. Jansen* (1750) 1 Atk. 339; *Goodrich v. Rogers* (1882) 101 Ill.